

## **FINAL STATEMENT OF REASONS:**

This action amends Section 3173.1 of the California Code of Regulations (CCR), Title 15, Division 3, concerning visiting restrictions with minors within the California Department of Corrections and Rehabilitation (Department).

These regulations bring the Department into compliance with the Superior Court of California, County of Del Norte order, In re Raymond Anthony Reyes, HCPB04-5166 which permits sex offenders to have non-contact visits with minors.

The Department, recognizing the value of visiting for establishing and maintaining meaningful family and community relationships, seeks to standardize processes concerning visiting restrictions with minors that were formerly subject to local interpretation. These regulations will retain some appropriate flexibility to individual institutions, facilities, and their visitors, while at the same time, ensure the safety of all persons, including visiting minors, and will ensure the legitimate penological interests of maintaining the safety and security of the institutions.

This action amends the current CCR Section 3173.1, with language, which has been rewritten for clarity and easier reference by staff, inmates, and the public in general. Some specific regulatory provisions are retained in virtually unchanged form, while at the same time, new regulatory provisions are added concerning restricted visitation with minor victims, as well as, restrictions for visitation with minors deemed as non-victims. Additionally, new language is provided concerning the responsibility of the Institutional Classification staff for the review and determination concerning the safety of visitation with minors in a contact or non-contact setting.

**Section 3173.1 (a) is adopted** to clarify the restriction of visitation with a minor victim for inmates convicted of PC Sections 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289 except as authorized by a Juvenile court order pursuant to Welfare and Institutions Code Section 362.6. Visitation pursuant to such an order shall be limited to non-contact status.

**Subsection 3173.1 (b) is adopted** to provide specific direction for restricting visitation with any minor who is not the victim of the crime for inmates convicted of PC Section(s) 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289. Visitation with any minor who is not the victim of the crime shall be limited to non-contact status. This restriction is clarified to protect minor visitors from inmates who have been convicted of PC Sections which show an "intent to harm the child" or show a nexus to that harm.

**Subsection 3173.1 (c) is adopted** to provide specific direction for restricting visitation with the minor victim for inmates convicted of PC Section 269, 273a, 273ab, or 273d. All visiting with the minor victim shall be limited to non-contact status.

**Subsection 3173.1 (d) is adopted** to provide specific direction for restricting visitation for inmates convicted of PC Sections 187, 269, 273a, 273ab, or 273d, when the victim is a minor, visitation with any other minor shall be limited to non-contact status except as authorized by the Institution Classification Committee (ICC).

**Subsection 3173.1 (e) is adopted** to provide specific direction for restricting visitation for inmates who have been arrested, but not convicted of any of the PC Sections included in this Section and the victim of the crime is a minor, the classification committee shall determine whether all visitation with a minor(s) is to be limited to non-contact status. This Section also gives specific instruction to assist the classification committee in determining if contact or non-contact visiting would be allowed for inmates arrested for any of the above mentioned PC Sections.

**Subsection 3173.1 (f) is adopted** to provide specific direction that, if the classification committee making a decision regarding the visiting status of an inmate described in (e) above, determines that the

inmate will pose a harm to minor visitors in contact visitation, it shall order all the inmates visitation with minors be restricted to non-contact status.

**Subsection 3173.1 (g) is adopted** to provide specific direction that if the inmate disagrees with the decision of the classification committee the inmate may file a CDC Form 602, Inmate/Parolee Appeal Form.

#### **DETERMINATION:**

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

#### **ASSESSMENTS, MANDATES, AND FISCAL IMPACT:**

This action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

#### **PUBLIC HEARING COMMENTS:**

Public Hearing: Held February 10, 2006, at 10:00 a.m.

#### **SUMMARIES AND RESPONSES TO COMMENTS AT THE PUBLIC HEARING:**

##### **Speaker #1:**

**Comment A:** Speaker states that he is opposed to this regulation. He contends that the regulation is unnecessary. Speaker also states that there is no fiscal impact, and no elimination nor creation of jobs. Speaker further contends that if the Department operated their facilities correctly there would be no need for this regulation.

**Accommodation: None.**

**Response A:** The Department contends that this regulation is necessary to ensure the safety of all persons including visiting minors and to ensure the legitimate penological interests of maintaining the safety and security of the institutions.

**Comment B:** Speaker states that while there are signs posted at the institutions stating that the Department encourages visiting, this change shows no encouragement to visit.

**Accommodation: None.**

**Response B:** The Department contends that this regulation does not discourage visiting in that it seeks to standardize processes concerning visiting restrictions with minors that were formerly subject to local interpretation. At the same time, it supports the safety of all persons including visiting minors and will ensure the legitimate penological interests of maintaining the safety and security of the institutions. The restriction on visitation with minors for inmates convicted of certain sex offenses is based on Penal Code (PC) Section 1202.05, which was adopted by the legislature and signed into law by the Governor. Regarding visiting restrictions for these offenders, the Department's regulation implements what the PC requires.

**Speaker #2:**

**Comment A:** Speaker states he is an attorney representing a CDCR inmate. Speaker contends that he is in favor of this regulation to a degree. He further states that he would like to see the same flexibility in the non-contact visiting for inmates convicted of PC violations listed in Section 3173.1(b) as that given for inmates convicted for PC violations listed Section 3173.1(d). He contends that while this change is good and helpful, it still precludes his client's children from being able to touch and hold their father, even in a supervised situation, due to his specific crime. Speaker asks that the Department go further and allow supervised visitation rather than solely non-contact visitation for inmates with case factors like his client's.

**Accommodation: None.**

**Response A:** The Department seeks to strike a thoughtful balance between its responsibility to provide safe and healthy visitation and the risks presented by certain offenders. It is the Department's contention that inmates convicted of PC violations listed in Section, 3173.1(b) have a greater potential of causing harm to a non-victim minor in a contact situation than those convicted of PC violations listed in Section, 3173.1(d). Inmates convicted of PC violations listed in Section 3173.1(b) are the same offenders who are prohibited visitation with their minor victim with out an order from the Court. The Department also contends that it would be inappropriate and potentially dangerous to allow inmates convicted of PC violations listed in 3173.1(b) the same flexibility in contact visiting that is extended to inmates convicted of those PC violations listed in 3173.1(d). The Department further contends that this regulation is needed in order to ensure the safety of all persons including visiting minors and to ensure the legitimate penological interests of maintaining the safety and security of the institutions.

**Speaker #3:**

**Comment A:** Speaker states she is the wife of a CDCR inmate represented by Speaker #2. Speaker further contends that she is in favor of this regulation but asks the Department to allow contact visitation because CDCR visiting rooms are very well supervised by Correctional Officers.

**Accommodation: None.**

**Response A: See Speaker #2, Response A.** Also the Department contends that the amount and level of correctional supervision in the visiting rooms of CDCR was considered when proposing this regulation.

**Speaker #4:**

**Comment A:** Speaker states that she is the sister of a CDCR inmate. Speaker contends that she and her children are precluded from visitation with her brother. Speaker further contends that her children miss their uncle very much and that they and his children should be allowed to see their uncle.

**Accommodation: None.**

**Response A:** The Department contends that although the above comment does regard an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is generalized and personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:****Commenter #1:**

**Comment A:** Commenter contends that she is in favor of this regulation. She contends that the change is important not only for the inmate, but for the child who has experienced feelings of loss and abandonment brought on by being restricted from visiting.

**Accommodation: None.**

**Response A:** The Department agrees with commenter. The Department recognizes the value of safe and healthy visiting to establish and maintain meaningful family and community relationships.

**Comment B:** Commenter contends that she agrees that if situations arise in which an inmate, convicted of a crime against a child during the course of the visit, shows an intent to harm the child, the visiting privileges should be withdrawn. Commenter contends, however, that if the inmate convicted of a crime against a child shows remorse, has previously visited and shown no intent to harm the child, and has been caring, supportive and respectful to the child, then visiting should not be denied based on the inmates crime.

**Accommodation: None.**

**Response B:** The Department has no discretion on the visiting restrictions established for sex offenders convicted of offenses listed in PC Section 1202.05. The Department contends that this regulation expands the ability of the Institutional Classification staff to conduct case by case reviews and determinations concerning the safety of visitation with minors in a contact or non-contact setting for those inmates convicted of certain PC violations. The Department also contends that this regulation gives Classification Committees the ability to take such things as past successful visitation with minors into account when making a determination regarding whether visitation with a minor may be in a contact or non-contact setting.

**Commenter #2:**

**Comment A:** Commenter contends that she is in favor of this regulation. She states the previous regulation punishes children most of all. She also contends that the system was hurting the inmate by not allowing them to see the children.

**Accommodation: None.**

**Response A: See Commenter #1 Response A.**

**Commenter #3:**

**Comment A:** Commenter contends that she is in favor of this regulation. She contends that the previous regulation restricted her brother from visiting with his grandchildren and created many hardships on her family. She further contends that this change would be better if it allowed visiting in person, but agrees the regulation will benefit her family.

**Accommodation: None.**

**Response A: See Commenter #1 Response A.**

**Commenter #4:**

**Comment A:** Commenter contends that she is in favor of this regulation. She contends that her children would greatly benefit by the change in that they could sit next to and hug someone who is very special to them.

**Accommodation: None.**

**Response A: See Commenter #1 Response A.** Also the Department intends for this regulation to strike the appropriate balance between safe and healthy visitation and the protection of minors in a correctional setting.

**Comment B:** Commenter contends that she would not want the Department to neglect the protection of children who have been victimized and further contends that the Department has to separate

the cases with this specific case factor from other cases in order to preserve valuable relationships.

**Accommodation: None.**

**Response B: See Commenter #1 Response A.**

**Commenter #5:**

**Comment A:** Commenter contends that he is in favor of this regulation. He further contends that the change will benefit the mothers imprisoned in State of California. He contends the forced separation from their children is cruel and unusual.

**Accommodation: None.**

**Response A: See Commenter #1 Response A.**

**Commenter #6:**

**Comment A:** Commenter contends that he is in favor of this regulation. Commenter contends that in Robin J. v. Superior Court (Lucas J.) (2004) 124 Cal. App. 4<sup>th</sup> 414, CalRptr.3d the court states that the CCR 3173.1 prohibited non-victim children from visiting with their incarcerated parents while allowing the children who were the victims of certain inmates to visit with those who victimized them. Commenter contends that the prior regulations turned PC Section 1202.5 and Welfare and Institutions Code around to where only the child victims were allowed to visit with inmates who victimize them. Commenter further contends that the Robin court went on to say "We, like the Juvenile Court, have serious doubts as to whether regulation 3173.1 bears any rational relationship to the CDC's stated penological interests in protecting the children in the visiting room".

**Accommodation: None.**

**Response A: See Commenter #1 Response A.** Also regarding the portion of this comment referring to regulation 3173.1 and the Robin court, the Department contends that this regulation, which is in emergency effect, actually permits visitation with minors for certain inmates while the prior regulation disallowed such visitation altogether. Inmates convicted of violating PC Sections 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289 when the victim is a minor, are allowed non-contact visitation with non-victim minors, while the previous regulation prohibited any visitation with minors for inmates convicted of these crimes. The Department is compelled to point out that the prior regulation did not permit visits between minor victims and those who victimized them unless ordered by the Court, for inmates convicted of violating PC Section 1202.05.

**Comment B:** Commenter contends that according to the California Notice Register, the Department has denied Petitioner Hebbe's petition. Commenter contends that the Register states that the Department values visiting as a means of maintaining meaningful family and community relationships, and that the Department reviews ways to improve inmate visiting.

**Accommodation: None.**

**Response B:** The Department contends that although the above comment does regard an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is insufficiently related to the specific action or actions proposed to the extent that no meaningful response can be formulated by the department in refutation of or accommodation to the comment.

**Comment C:** Commenter contends that the Department states that the purpose for adopting Section 3173.1 was to prevent harm to children and was preventative not punitive. Commenter

further contends that according to the California Notice Register the rule gives the Department staff, on a case by case basis, the ability to protect visiting children when there is substantial evidence that exists that an inmate has a history of misconduct described in section 3177(b)(1).

**Accommodation: None.**

**Response C:** The Department contends that this rule making action deletes the reference to Section 3177(b)(1) in this regulation.

**Commenter #7:**

**Comment A:** Commenter contends that she is in favor of this regulation. Commenter further states that her husband is a CDCR inmate and he was unable to visit with his 16 year old daughter prior to this change. Commenter urges the Department to consider allowing some inmates to have contact visitation with minors who are not the victims.

**Accommodation: None.**

**Response A: See Commenter #1 Response A.** Also The Department contends that this change expands the discretion of the Institutional Classification staff to conduct case by case reviews and determinations concerning the safety of visitation with minors in a contact or non-contact setting for inmates convicted of certain PC violations.

**Commenter #8 and #9:**

**Comment A:** Commenter #8 and 9, contend to be sisters and are in favor of this regulation. They further contend that their small children were able to visit with their father until their visitation was restricted due to the prior regulation. Commenters contend that their father is no harm to their children and that their father misses his grandchildren very much.

**Accommodation: None.**

**Response A: See Commenter #1 Response A.**

**Commenter #10:**

**Comment A:** Commenter contends that she is in support of this regulation. She further contends that in order for prisoners to rehabilitate, they need family support. Commenter contends that the CDCR inmate she writes about has children and nieces and nephews that he had been able to visit with prior to a change in the rules. Commenter says the inmate in question also has a special needs daughter that relates more to her father in 'physical visitation' more so than in 'telecom visiting.' Commenter urges the Department to 'reinstate' visitation.

**Accommodation: None.**

**Response A: See Commenter #1 Response A and B.**

**Commenter #11:**

**Comment A:** Commenter contends that the human rights of the children are being overlooked. Commenter contends that restriction from visiting is not a matter of safety as there are several Correctional Officers present during visitation.

**Accommodation: None.**

**Response A:** The Department contends that the amount and level of correctional supervision in the visiting rooms of CDCR was considered when proposing this regulation. The Department has a dual responsibility to encourage healthy visitation while protecting all visitors' safety and well being.

**Commenter #12 through #42:**

**Comment 1:** Commenters contend that they are opposed to this regulation. Commenters contend that the regulation is being applied as a blanket policy and does not offer a case by case review of affected prisoners.

**Accommodation: None.**

**Response 1:** The Department disagrees. The Department does not have the authority to expand the visiting privileges for inmates convicted of PC violations listed in 3173.1(a). According to PC Section 1202.05, inmates convicted of these violations shall be prohibited from visitation with the minor victim. In the case of those inmates convicted of PC violations listed in 3173.1(b), the Department points out that these are the same PC violations as listed in 3173.1(a). Therefore the Department contends that contact visitation with a non-victim minor places the minor at substantial risk, as the inmate convicted of these crimes has shown an intent to harm minors. Additionally, in the case of those inmates convicted of PC violations listed in 3173.1(c), it is the Department's contention that although inmates convicted of violating, for example, PC Section 269, "Aggravated Sexual Assault of a Child" are not included in the visiting prohibition noted in PC Section 1202.05, the Department should, nonetheless exercise responsible discretion when authorizing such offenders to participate in visitation with minors, limiting the visitation to non-contact based upon the severe nature of the listed offenses. Lastly, this regulation expands the ability of the Institutional Classification staff to conduct case by case reviews and determinations concerning the safety of visitation with minors in a contact or non-contact setting for those inmates convicted of PC violations listed in 3173.1(d) and further expands the ability of the Institutional Classification staff to conduct case by case reviews and determinations concerning the safety of visitation with minors for those inmates arrested but not convicted of PC violations listed in 3173.1(e). It is the Department's contention that these case by case reviews will expand the visiting privileges to many inmates who were previously restricted from visitation with minors while at the same time ensuring the safety and security of visiting minors.

**Comment 2:** Commenters contend that there is a lack of non-contact visiting booths available to accommodate the large number of visitors which this regulation affects.

**Accommodation: None.**

**Response 2:** The Department concurs that there are limits to visiting space for both contact visitation and non-contact visitation at all institutions based upon population pressures and budget restrictions. However, specific future impact has not yet been determined. Policies are in place to ensure that non-contact visiting space is efficiently used in all CDCR Institutions. Prospective visitors may contact the Institution in advance using the Institution Non-Contact Visiting Scheduling process to ensure that they receive a scheduled visit.

**Comment 3:** Commenters contend that restricting a class of inmates to non contact visits with minors places those inmates at risk to be targeted as sex offenders.

**Accommodation: None.**

**Response 3:** The Department contends that inmates are placed on non-contact visitation status for a variety of reasons, which include disciplinary violations, safety concerns, misbehavior in the visiting room, etc. Inmates should not provide other inmates information regarding the reasons for such restrictions. Also the Department contends that inmates have the option of declining to visit with minors if they are restricted to non-contact visitation.

**Comment 4:** Commenters contend that the regulation is unnecessary due to the amount of correctional supervision and cameras in the visiting rooms.

**Accommodation: None.**

**Response 4:** The Department contends that the amount and level of correctional supervision in the visiting rooms of CDCR was considered when proposing this regulation.

**Comment 5:** Commenters contend that there is no penological interest in that the affected inmates are allowed to visit with their adult visitors in the same visiting room where there are minors present who are visiting other inmates.

**Accommodation: None.**

**Response 5:** The Department contends that each prospective visitor is approved to visit with a particular inmate. The Department does approve or disapprove visitors based on another inmates approved visitor(s) who may be present in the visiting room at the same time. Additionally, inmates are given a visiting status based on their particular case factors. Inmates are not evaluated based on the case factors of another inmate who may be present in the visiting room. It is the Department's responsibility to ensure that these restrictions are enforced. Additionally, those adults accompanying minors who are visiting another inmate are an additional deterrent to any misconduct the inmate, whose offenses are covered by this regulation, may contemplate.

**Comment 6:** Commenters contend that they are not aware of one incident in a visiting room where a child was harmed by an inmate in contact visiting.

**Accommodation: None.**

**Response 6:** The Department contends that although commenters are unaware of incidents occurring in visiting rooms, there have been grievous incidents involving sexual assault, sexual, molestation, and other harm that has been perpetrated against minors. In one incident a non-victim minor visitor was molested on five separate occasions while visiting an inmate who was convicted of a sexual crime against a minor. The inmate's crime did not fall into the category of prohibited visitation under PC Section 1202.05. In another incident a minor visitor was sexually molested while visiting an inmate who was well known and trusted by the victim. Additionally in a three year period, 17 sexual assaults have occurred in the visiting rooms of CDCR. It is the Departments contention that good visiting policy should be proactive as well as preventative.

**Commenter #43 through #45:**

**Comment A:** Commenters contend that the Initial Statement of Reasons, Paragraph 6 states in part that the restriction is clarified to protect minor visitors from inmates who are convicted of PC violations which show "an intent to harm the child or show a nexus to that harm." Commenter contends that this regulation places the interpretation of 'intent to harm' in the hands of prison officials and not in the hands of the parents of non-victim children who have visited successfully in the past.

**Accommodation: None.**

**Response A: See Commenter #1, Response B.** Also the Department contends that although family members may have the best intentions regarding visits involving their minor children, it is the responsibility of the Department to evaluate risks and implement policy that will ensure the safety and security of inmates, staff, and visitors in CDCR Institutions. The Department also contends that although inmates convicted of violating, for example, PC Section 269, "Aggravated Sexual Assault of a Child" are not included in the visiting prohibition noted in PC Section 1202.05, it should, nonetheless exercise responsible discretion when authorizing such offenders to participate in contact visitation with minors.



**Comment B:** Commenters contend that the CDCR should allow a process where parents of non-victim children would have some input into the determinations that either allow or deny contact visitation.

**Accommodation:** None.

**Response B:** See this Commenter, Response A.

**Commenter #46:**

**Comment A:** Commenter contends that she is opposed to this regulation. She contends that the regulation does not provide any possibility of review.

**Accommodation:** None.

**Response A:** See Commenter #1 Response B.

**Comment B:** Commenter contends that the regulation treats juvenile convictions the same as adult convictions. Commenter contends that being convicted of a juvenile crime, where the chances are more likely that the victim is also a minor, does not show the propensity for an adult to harm a child.

**Accommodation:** None.

**Response B:** PC Section 1202.05 specifically prohibits visiting with minor victims for the enumerated crimes. PC 1202.05 does not make exceptions based on the age of the perpetrator. Therefore, these regulations were promulgated to be consistent with this PC language. Also the Department is not aware of any research that shows that juvenile sex offenders are less likely to harm children once they become an adult.

**Comment C:** Commenter contends that the regulations fail to acknowledge that visiting takes place in a well lit public place where the likelihood of criminal conduct is extremely low.

**Accommodation:** None.

**Response C:** See Commenter #12, Response 4.

**Comment D:** Commenter contends that she feels these regulations will result in needless trauma to children of prisoners whose crimes may have been committed years or decades in the past. She also contends that Inmates visiting with a minor in a non-contact situation will subject them to violent retaliation and will be forced to choose between visitation with a loved one and their own personal safety.

**Accommodation:** None.

**Response D:** See Commenter #12 Response 1 and 3.

**Comment E:** Commenter urges the Department to insert a provision into the regulations that provides each prisoner with an individual review which addresses their suitability for visitation with minors.

**Accommodation:** None.

**Response D:** See Commenter #12 response 1.

**Commenter #47:**

**Comment A:** Commenter contends that she is opposed to this regulation. She contends that it is criminal to keep a child away from a parent just because he is locked up.

**Accommodation: None.**

**Response A: See Commenter #43, Response A.**

**Commenter #48:**

**Comment I:** Commenter, who represents herself as staff member of the Prison Law Office, contends that this regulation does not provide an alternative for contact visitation for non-victim minors for inmates convicted of certain enumerated PC violations listed in 3173.1(a) through 3173.1(d). Commenter further contends that there should be a provision in these regulations, which allows the family to petition the Juvenile and Family Courts for contact visitation between the inmate and the non-victim minor for inmates convicted of the PC violations listed in 3173.1(a) through 3173.1(e).

**Accommodation: None.**

**Response I:** The Department contends that this regulation, which is in emergency effect, actually permits visitation with minors for certain inmates while the prior regulation disallowed such visitation altogether. Inmates convicted of violating PC Sections 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289 when the victim is a minor, are allowed non-contact visitation with non-victim minors, while the previous regulation prohibited any visitation with minors for inmates convicted of these PC violations. The emergency regulation has an additional provision in Section 3173.1(d) which allows visitation, but limits non-victim minors to non-contact visitation, with inmates convicted of certain crimes, unless the Classification Committee authorizes contact visitation. The Department contends that under the previous regulation, inmates convicted of violating PC Sections 187 (when victim was a family member or a minor), 269, 273a, or 273d could be prohibited from any visitation with minors, or could be allowed non-contact visitation. PC Section 269 includes crimes already listed in the previous regulation (PC 261(a)(2), 264.1, 286, 288a, and 289(a)). PC Section 273ab, assault resulting in death of a child under 8, was added into the emergency regulation Section 3173.1(d). Consequently, the Department contends that the previous regulations contain the authority to impose non-contact visitation with minors for all inmates convicted of four of the five listed PC Sections. It is the Department's contention that inmates convicted under PC Section 273ab for example have already demonstrated the potential of causing harm to a minor in a contact situation. This restriction is needed to protect minor visitors from inmates who have been convicted of any PC Section which shows "an intent to harm the child" or shows a nexus to that harm. Regarding the comment suggesting that families be allowed to petition the Juvenile Courts for contact visitation, the Department contends that the creation of the judicial process suggested by Commenter is beyond the Department's rulemaking authority. The statute for such Court provision is located in the Welfare and Institutions Code. However, if an inmate disagrees with the Classification Committee's decision, (s)he may go through the 602 appeal process, and if still unsatisfied, may seek judicial review in the form of a Petition for Writ of Habeas Corpus. Finally, visiting applicants and approved visitors who disagree with staff decisions relating to visiting may appeal that decision under CCR Section 3179 "Appeals Relating to Visiting".

**Comment II:** Commenter contends that these regulations will jeopardize the safety and security of prisoners who are impacted by Visitation Restrictions. Commenter further contends that under these regulations, prisoners will be easily identified as inmates who have been convicted of crimes against minors due to being restricted to non-contact visitation with minors, but contact visitation with adult visitors. Commenter contends that this situation will force the inmate to choose between being identified as an inmate convicted of crimes against minors and visitation with loved ones who are minors.

**Accommodation: None.**

**Response II: See commenter #12, Response 3.**

**Comment III:** Commenter contends that prisons have a limited number of non-contact visitation booths and that these regulations will severely limit families' access to visitation and will subject them to long delays in scheduling non-contact visitation.

**Accommodation: None.**

**Response III: See commenter #12, Response 2.**

**Comment IV:** Commenter contends that 3173.1(e) does not provide the prisoner with a meaningful way to counter arrest allegations involving the enumerated crimes involving a minor victim. Commenter further contends that arrests are often based on evidence that is inaccurate to support a conviction. According to the commenter, arrest reports can contain biased and factually inaccurate evidence and therefore should not be used by the Classification Committee to determine whether an inmate may present the potential for harm to a minor visitor. Commenter requests that the regulation be modified to provide prisoners with a meaningful opportunity to defend against arrest allegations and present evidence to counter such allegations prior to the removal of contact visitation privileges.

**Accommodation: None.**

**Response IV:** The Department contends that the Classification Committees will consider the circumstances of the misconduct involving a minor victim in determining whether the inmate poses a threat of harm to minor visitors in contact visitation. In making its determination, the classification committee shall consider, but is not limited to, arrest reports, probation officer reports, court transcripts and parole revocation transcripts. Also, the Department contends that the Classification Committee are comprised of a quorum of individuals who have the ability to take in to account the needs of the inmate, the needs of family members, and the institution safety as a whole, and who will then come to a decision regarding the case factors. Additionally if an inmate disagrees with the Classification Committee's decision, (s)he may file an inmate grievance via the CDC Form 602 appeal process as outlined in Sections 3084.1 through 3085, and if still unsatisfied, may seek judicial review in the form of a Petition for Writ of Habeas Corpus.

**Commenter #49:**

**Comment A:** Commenter contends that Avenal State Prison (ASP) intends to comply with this regulation by segregating certain inmates in protective custody and then establishing separate hours and days for those inmates to visit. Additionally, commenter contends that ASP intends to allow non-contact visitation only for these inmates.

**Accommodation: None.**

**Response A: See Commenter #6, Response B.** In regards to the comment concerning non-contact visitation, the Department contends that the Institution officials will remain within the parameters of this regulation in the application of non-contact/contact visitation according to the specific case factors for the inmate.

**Comment B:** Commenter contends that this regulation will result in different groups of inmates being singled out, labeled, and subjected to verbal and physical harm and will further take away a fundamental element in maintaining family relationships.

**Accommodation: None.**

**Response B: See Commenter #12, Response 3.** Additionally, the Department contends that the Classification Committees will consider the circumstances of the misconduct involving a minor victim in determining whether the inmate poses a threat of harm to minor visitors in contact visitation. Also the Department contends that the Classification Committees are comprised of a

quorum of individuals who have the ability to take into account the needs of the inmate, the needs of family members, and the institution safety as a whole in order to come to a decision regarding the case factors.

**Comment C:** Commenter contends that the regulation is not clear in that it uses “Visits with Minors” and “Visitation with Minors” in the language. Commenter contends that the institutions will interpret ‘Visits with Minors’ and ‘Visitation with Minors’ to mean that the affected group of inmates will not be allowed to visit in the visiting room while there are minors present visiting other inmates.

**Accommodation: None.**

**Response C: See Commenter #12, Response 5.**

**Commenter #50:**

**Comment A:** Commenter contends that there are 30,000 children connected to inmates who will be permanently separated from their mothers and fathers. Commenter further contends that if anyone can get through to make an appointment they will be restricted to only one hour of visiting behind the glass. Commenter also contends that the amount of non-contact visiting booths in each institution is not sufficient for the 600 to 1000 inmates located in each facility and that these non-contact visiting booths are already over burdened.

**Accommodation: None.**

**Response A: See Commenter # 12, Response 2.** The Department also observes that children will not be permanently separated from their mothers and fathers unless the parents are serving a life sentence. Even then, once they are no longer minors, the visiting restrictions for these children will be lifted.

**Comment B:** Commenter contends that the PC Sections listed in this regulation includes categories that are not sex offences. Commenter further contends that individuals who have been accused, but not convicted, by a court of law for these PC Sections are included in this group.

**Accommodation: None.**

**Response B: See Commenter # 12, Response 1.** The Department contends that this change was necessary to protect minor visitors from inmates who have been convicted of PC Sections which show an “intent to harm the child” or show a nexus to that harm. For example, although offenders convicted of PC Section 273ab “Assault Resulting in the Death of a Child Under Eight Years of Age”, are not included in the visiting prohibition listed in PC Section 1202.05, the department asserts that they have already demonstrated they pose a risk to minors.

**Comment C:** Commenter contends that this rule change targets the mentally ill, is the key for suicides, and the Department should expect more riots.

**Accommodation: None.**

**Response C:** The Department contends that inmates who are participants in the Mental Health Services Delivery System are allowed to receive and participate in visiting activities commensurate with their specific case factors. Additionally if commenter has specific information regarding inmates contemplating suicide and or any specific information regarding riots, the Department strongly urges commenter to contact the specific institution in order to protect inmates, staff, and visitors alike. The commenter may also contact the Office of the Ombudsmen at (916)-445-1748 or on the internet at [www.cdcr.ca.gov/communications/00contact.html](http://www.cdcr.ca.gov/communications/00contact.html).

**Commenter #51:**

**Comment A:** Commenter contends that she has a 16 year old mentally challenged daughter who had been visiting with her father until about three years ago when her visitation was restricted. She further contends that these visits had a very positive impact on her daughter's condition. Commenter further contends that the revocation of this visitation has been traumatic to her daughter. Commenter urges the Department to consider the positive impact of these visits if reinstated.

**Accommodation: None.**

**Response A: See Commenter #1, Response A.** Also unless the inmate in question has been convicted of an offense listed in PC 1202.05, the Institution Classification staff has the latitude, under this regulation, to make a visitation determination in this case.

**Comment B:** Commenter contends that her daughter's father was convicted of a PC violation listed in 3173.1(d). Commenter further contends that non-contact visitation for her daughter and the father is not a viable option. Commenter contends that the positive development of the relationship between father and daughter is based on appropriate touch.

**Accommodation: None.**

**Response B: See Commenter #1, Response B and Commenter # 43, Response A.**

**Comment C:** Commenter contends that restricting inmates to non-contact visiting puts a mark on them and jeopardizes their safety.

**Accommodation: None.**

**Response C: See Commenter #12, Response 3.**

**Commenter #52:**

**Comment A:** Commenter contends that she is opposed to this regulation. Commenter contends that there are variables behind a conviction of willful harm, assault, and corporal punishment involving a child. She further contends that these crimes are often committed while under the influence of drugs. According to the commenter, these crimes would not be repeated when the person gets 'clean and sober.' Commenter states restricting visits behind glass would be traumatic for children who have previously been allowed to visit in a contact situation.

**Accommodation: None.**

**Response A: See Commenter #1, Response B.**

**Comment B:** Commenter contends that the case by case reviews, which are determined by the Classification Committees at each institution, do not appear to be standardized and will allow a subjective determination by individuals with differing views.

**Accommodation: None.**

**Response B: See Commenter #48, Response IV.**

**Comment C:** Commenter contends that restricting inmates to non-contact visiting identifies the inmate as a predator and puts them at risk for their safety.

**Accommodation: None.**

**Response C: See Commenter #12, Response 3.**

**Comment D:** Commenter makes the suggestion that an inmate who continually has rules violation reports during their incarceration should have their rights revoked until they become compliant. Commenter contends that to take away visits from an inmate who is on the right path is too harsh.

**Accommodation: None.**

**Response D:** The Department contends that these visiting restrictions are crafted to take into account the inmate's behavior and conduct prior to incarceration, as well as the commitment offense. This information is used to determine the propensity that an inmate may have to harm a minor.

**Commenter #53:**

**Comment A:** Commenter contends that she is opposed to this regulation. She contends that the Department is coming up with new ways to destroy the inmate. She further contends that the inmate will lose all hope and ultimately die due to the separation from family, and that this is beyond cruel and unusual.

**Accommodation: None.**

**Response A:** The Department observes that this regulation is less restrictive than the previous regulation governing visiting restrictions with minors, which became effective March 2003.

**Commenter #54:**

**Comment 1:** Commenter contends that 3173.1(b) should contain language that states 'an inmate convicted of the crimes noted in this Section shall be allowed contact or modified contact visitation unless the Classification Committee has clear and convincing evidence that the conduct the inmate is convicted of can reasonably be performed in the visiting room.'

**Accommodation: None.**

**Response 1:** It is the Department's contention that inmates convicted under the PC Sections listed in 3173.1(b) have demonstrated the potential of causing harm to a minor in a contact situation. This restriction is needed to protect minor visitors from inmates who have been convicted of PC Sections which show an "intent to harm the child" or show a nexus to that harm.

**Comment 2:** Commenter contends that 3173.1(d) should contain language that states 'an inmate convicted of the crimes noted in this Section shall be allowed contact or modified contact visitation unless the Classification Committee has clear and convincing evidence that the conduct the inmate is convicted of can reasonably be performed in the visiting room.'

**Accommodation: None.**

**Response 2:** The Department contends that the Classification Committees will consider the circumstances of the misconduct involving a minor victim in determining whether the inmate poses a threat of harm to minor visitors in contact visitation. This determination includes an assessment of the amount and type of correctional supervision in the visiting rooms. Also the Department contends that the Classification Committees are comprised of a quorum of individuals who have the ability to take into account the needs of the inmate, the needs of family members, and the institution safety as a whole in order to come to a decision regarding the case factors.

**Comment 3:** Commenter contends that 3173.1(f) should contain language that states 'if an inmate poses a threat to a particular class of minors in contact visitation, the Classification Committee shall order all contact with that class of minors to be limited to modified contact visitation unless the Classification Committee has clear and convincing evidence that the safeguards of a

modified contact visitation is insufficient to protect the minor. In this case visitation shall be non-contact.

**Accommodation: None.**

**Response 3: See this Commenter, Response 2.**

**Comment 4:** Commenter contends that a new section should be added to contain a description of 'Modified Visitation.' The description includes language that the inmate and the minor visitor may grasp hands or arms at the beginning and end of the visit, and that there is at least one approved adult visitor situated between the inmate and the minor visitor at all times.

**Accommodation: None.**

**Response 4:** The Department contends that the amount and type of available correctional supervision needed to make this comment a viable option is not possible without an increase in staff assigned to the visiting area. The Department further contends that inmates convicted of certain PC sections have demonstrated the potential of causing harm to a minor in a contact situation. The Department also contends that it is the responsibility of the Department to evaluate risks and implement policy that will ensure the safety and security of inmates, staff, and visitors in the institutions, while encouraging a healthy visiting environment. The Department's rules regarding proper dress, conduct, and absence of contraband, for example, are designed to promote healthy visiting.

**Comment 5:** Commenter contends that language should be added to include a mandate that the Classification Committee shall provide the inmate with written explanation of the admissible evidence and rational it used to come to the decision regarding visitation.

**Accommodation: None.**

**Response 5:** The Department contends that each inmate is given a CDC 128 G, Classification Chrono, each time they are seen in a Classification Committee, which lists the specific actions taken and gives the reason for the action. Inmates are also given the opportunity to ask questions and add comments to the proceeding and are advised of their right to appeal any decision reached by the committee.

**Commenter #55:**

**Comment A:** Commenter states that she is in favor of this regulation. Commenter further contends that the previous regulation was so vague that the CDCR committee did whatever they felt they could do. She contends that the previous regulation left so much room for interpretation that the decision was up to how the committee members felt about the inmate. Commenter contends that this change to the regulation is written with clarity and no mistakes.

**Accommodation: None.**

**Response A: See Commenter #1 Response A.**

**Commenter #56:**

**Comment A:** Commenter contends that he is a Deputy State Public Defender and is submitting this comment on behalf of his client. Commenter contends that PC Section 2600 states that a prisoner may be deprived of rights only as reasonably related to the legitimate penological interests. Commenter further contends that this regulation establishes non-contact visitation for inmates convicted of violating PC Section 187. Commenter contends that this regulation should be amended to provide for contact visitation for these inmates unless it would jeopardize the safety and security of the Institution.

**Accommodation: None.**

**Response A:** The Department observes that the prior regulation, which was enacted in March 2003, gave it the authority to deny visitation with minors altogether for inmates convicted of Penal Code 187 (murder, when the victim was a family member or minor). The prior regulation also gave it the authority to limit visitation with minors to non-contact status for these inmates. The current emergency regulation does not permit the Department to prohibit these visits altogether and instead mandates non-contact status for these visits. The Department contends, therefore, to the extent that a right to reasonable opportunities to visit exists, the current emergency regulation's removal of authority to prohibit these visits altogether, combined with the restriction of any visits to non-contact, is reasonable and is necessary for the consistent and uniform application of the regulation departmentwide. The Department further contends that this regulation is consistent with PC Section 2600, in that prohibiting an inmate convicted of PC 187 Murder, when the victim was a minor, shows an the inmate has exhibited an intent to harm minors and therefore is needed to ensure the legitimate penological interests.

**Comment B:** Commenter notes that the Initial Statement of Reasons regarding this regulation states that the regulation is intended to comply with an order from Del Norte County Court which allows sex offenders non-contact visitation with minors. Commenter further contends that the Initial Statement of Reasons does not include any language regarding non-contact visitation for inmates convicted of violating PC Section 187 without committing a sexual offense.

**Accommodation: None.**

**Response B: See this Commenter, Response A.**

**Comment C:** Commenter contends that in order to meet the standard of clarity, the regulation must be clearly understood. Commenter further contends that in order to be clear and consistent the regulation should provide that the parents and guardians of minors who are denied contact visitation may appeal the decision under CCR, Title 15, Section 3179.

**Accommodation: None.**

**Response C:** The Department asserts that the CCR, Title 15, Division 3 contains many regulatory provisions relating to visiting. Section 3179 "Appeals Relating to Visiting" is a stand alone provision, and allows appeals by "approved inmate visitors" as well as "visiting applicants." Therefore, the Department believes that a cross reference to Section 3179 in the body of emergency regulation 3173.1 is not necessary for clarity.

**Commenter #57:**

**Comment A:** Commenter states that she is opposed to this regulation. Commenter contends that her concern is for the children of those inmates incarcerated for murder. Commenter contends that it is hard enough for these children when a parent is incarcerated and that restricting them to non-contact visitation will unnecessarily punishment the inmate and be more harmful to the children.

**Accommodation: None.**

**Response A:** It is the Department's contention that inmates convicted under the PC Sections listed in 3173.1(d) have the potential of causing harm to a minor in a contact situation. The Department further contends that these changes are needed in order to ensure the safety of all persons including visiting minors and to ensure the legitimate penological interests of maintaining the safety and security of the institutions.

**Commenter #58:**



**Comment A:** Commenter states that she is in favor of this regulation. Commenter contends that she knows of no better way to rehabilitate a man than through the ability for him to see his children on an occasional visit.

**Accommodation:** None.

**Response A:** See Commenter #1 Response A.

**Commenter #59:**

**Comment A:** Commenter contends that while she does see the value in restricting the visitation for a child that has been victimized, she contends that the Department should not apply a blanket solution because it will cause more problems.

**Accommodation:** None.

**Response A:** See Commenter #1 Response B.

**Comment B:** Commenter contends that there needs to be a provision for contact visitation verses behind the glass visitation for inmates who have proven that they pose no threat to minors.

**Accommodation:** None.

**Response B:** See Commenter #1 Response B.

**Comment C:** Commenter contends that restricting inmates to non-contact visitation may identify him as a child offender to other inmates and would put him at risk for stabbing or fighting.

**Accommodation:** None.

**Response C:** See Commenter #12, Response 3.

**Commenter #60:**

**Comment 1a:** Commenter contends that the Initial Statement of Reasons is incorrect due to the statement that there is no fiscal impact associated with this rulemaking action. Commenter contends that costs will incur due to the need for more non-contact visiting booths which will be needed as a result of an influx of people visiting in non-contact areas.

**Accommodation:** None.

**Response 1a:** See Commenter #12, Response 2. Also, if more non-contact visiting facilities are needed, the Department would have to secure additional funding in its budget from the legislature and Governor.

**Comment 1b:** Commenter contends that there will also be costs associated with the need for more staff to monitor the appointment making process currently used to schedule non-contact visiting appointments.

**Accommodation:** None.

**Response 1b:** See Commenter #12, Response 4. Also, additional staffing, if needed, would have to be secured through the state budget process.

**Comment 1c:** Commenter contends that more staff will be needed to review and process additional paperwork for inmates who will be placed into protective custody due to the fact that other inmates will target and victimize them because they will be viewed as inmates convicted of charges against minors as a result of being seen in non-contact visitation with minors and contact visitation with adults.

**Accommodation: None.**

**Response 1c: See Commenter #12, Response 3 and 4.**

**Comment 1d:** Commenter contends that more staff will be needed to obtain the funding necessary to improve visiting rooms, write Department Operations Manual, and do research associated with case factors which would be subject to this regulation.

**Accommodation: None.**

**Response 1d: See Commenter #12, Response 4.** Also, additional staffing, if needed, would have to be secured through the state budget process.

**Comment 1e:** Commenter contends that there will be an increase in cost associated in the litigation which will undoubtedly be brought against the Department in the event that any inmates are assaulted as a direct result of being forced to have non-contact visitation with a minor and identified as a danger to minors.

**Accommodation: None.**

**Response 1e: See commenter #12, Response 3.**

**Comment 1f:** Commenter contends that CCR Section 3170 will have to be amended to provide for changes in this regulation. Commenter further contends that CCR Section 3170(c)(2) states that inmates may not be permitted to visit with more than three visitors. Commenter contends that this is appropriate for inmates placed on non-contact visitation for misbehavior or safety reasons. However inmates placed on non-contact visitation pursuant to this change should be allowed the same amount of visitors as an inmate in a contact visitation.

**Accommodation: None.**

**Response 1f:** The Department contends that an analysis was done to determine whether this regulation was in conflict with other related sections of the CCR. Any section that was impacted by this regulation change would have been amended for consistency and included in this rule-making action. The Department contends that CCR Section 3170 does not require amending in order to carry out the specific provisions in this regulation. Additionally, the Department contends that the amount of visitors allowed to visit in a contact or non-contact area is determined by the space available and not the behavior of the inmate.

**Comment 2:** Commenter contends that the Department's visiting rooms must be improved in order to make room for the increase in visitors needing non-contact visiting accommodations. Commenter further contends that most non-contact visiting areas in the institutions are being used solely for inmates who have been placed in Administrative Segregation or Security Housing Unit. Commenter further contends that the Department is creating a new class of visitors and inmates and asks the question who will monitor these non-contact visits for this new class.

**Accommodation: None.**

**Response 2: See commenter #12, Response 2.** Also, regarding the comment about the new class of visitors and inmates, additional staffing, if needed, would have to be secured through the state budget process.

**Comment 3:** Commenter contends that the Department has not shown that they have provided a safe environment necessary to implement this regulation. Commenter further contends that inmates will be placed in life threatening situations due to their non-contact visitation with a minor. Commenter further contends that this regulation will produce safety risks for inmates, staff, and the public.

**Accommodation: None.**

**Response 3: See Commenter #12, Response 3.**

**Comment 4:** Commenter contends that it is wholly unfair to restrict inmates to non-contact visitation based on their case factors alone. Commenter also contends that it is discriminatory to inmates who are now, and have in the past, exhibited positive behavior in that they are treated the same as inmates who have exhibited bad behavior such as those placed in Administrative Segregation.

**Accommodation: None.**

**Response 4: See Commenter #1, Response B.** Case factors and behavior while incarcerated will be reviewed by Classification Staff when determining the visitation status of the inmate.

**Comment 5:** Commenter contends that inmates are responsible for their own actions and should be held individually accountable for their behavior. Commenter contends that this regulation is a blanket restriction based on an inmate's case factors and not based on the inmates current behavior. Commenter also contends that the Department should amend this regulation to give the discretion of the type of visit to the adult accompanying the minor.

**Accommodation: None.**

**Response 5: See Commenter #12, Response 1.** Also the Department contends that although family members may have the best intentions of the minor children in mind, it is also the responsibility of the Department to evaluate risks and implement policy that will ensure the safety and security of inmates, staff, and visitors in its Institutions.

**Comment 6:** Commenter observes that the Initial Statement of Reasons regarding this regulation indicates that the regulation will ensure the safety of all persons including minor visitors. Commenter contends that this statement is false in that any inmate seen visiting with a minor in a non-contact situation will be labeled as someone who is dangerous to children and therefore, will be placed at risk for injury.

**Accommodation: None.**

**Response 6: See Commenter #12, Response 3.**

**Comment 7:** Commenter contends that the Department is aware of the fact that it is putting inmates who are affected by this regulation at risk of injury by other inmates. Commenter further contends that the Department is aware that inmates affected by this regulation will voluntarily elect to forego visitation with minors rather than be subject to injury by other inmates. Commenter contends that this regulation forces the inmate to choose between visitation with a loved one and risk of injury.

**Accommodation: None.**

**Response 7: See Commenter #12, Response 3.** Also the Department further contends that these changes are needed in order to ensure the safety of all persons, including visiting minors, and to ensure the legitimate penological interests of maintaining the safety and security of the institutions.

**Comment 8:** Commenter contends that there are already a number of safeguards in the visiting rooms that discourage misbehavior. These safeguards include surveillance cameras and trained custody staff who monitor inmates and visitors while in the visiting room, making this regulation unnecessary. Commenter further contends that the Department has exaggerated the need to protect minor visitors in an attempt to unfairly subject certain inmates to increased punishment, assault by other inmates, and a lack of visitation.

**Accommodation: None.**

**Response 8: See Commenter #12, Response 4.** Regrettably, despite the Department's efforts and safeguards to create constructive visitation, visiting areas remain one of the most stressful areas for staff assignment due to the constant risk of introduction of dangerous contraband into the institution, and the potential for inmate and visitor misconduct. Therefore, this change is needed in order to ensure the safety of all persons including visiting minors and to ensure the legitimate penological interests of maintaining the safety and security of the institutions.

**Comment 9:** Commenter contends that the Department has no evidence to support the need for this change and is playing on the emotion of fear to enact this regulatory change.

**Accommodation: None.**

**Response 9: See Commenter #12 Response 6.** Also, the Department contends that PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons. The Department further contends that this regulation is needed in order to ensure the safety of all persons including visiting minors and to ensure the legitimate penological interests of maintaining the safety and security of the institutions.

**Comment 10:** Commenter contends that this regulation does not ensure the safety of minor visitors as the Department states, in that, inmates affected by this regulation are allowed to visit with their adult visitors in the same visiting room where there are minors present who are visiting other inmates. Commenter contends that this regulation is overly restrictive and designed to penalize certain groups of inmates.

**Accommodation: None.**

**Response 10: See Commenter #12, Response 5.**

**Comment 11:** Commenter contends that the Department is targeting certain inmates based on their case factors. Commenter further contends that the Department is overstepping its authority by imposing this blanket policy.

**Accommodation: None.**

**Response 11: See Commenter #1, Response B and Response 9 of this Commenter.**

**Comment 12:** Commenter contends that the Department has current problems with inmates being targeted for injury due to their case factors. Commenter contends that it is Department staff who discloses sensitive case factors about an inmate to other inmates in order to promote tension and unrest towards these inmates. Commenter further contends that he has seen numerous inmates being subject to brutal attacks due to their case factors and has had Department staff divulge case factor information about other inmates to him. Commenter contends that this type of behavior will be promoted by custody staff if this regulation is permanently enacted.

**Accommodation: None.**

**Response 12:** The Department contends that this regulations change is necessary to ensure the safety of all persons, including visiting minors, and to ensure the legitimate penological interests of maintaining the safety and security of the institutions. Additionally, it is strictly against Departmental policy for staff to disclose confidential information about an inmate to any other inmate. Also, if commenter has specific information regarding this type of information being unlawfully disclosed, he is encouraged to bring this information to the attention of a staff member, either at the institution or Department Headquarters, immediately in order to preserve the safety of inmates, staff, and visitors in the institution.

**Comment 13:** Commenter observes that according to the Initial Statement of Reasons regarding this rulemaking action, this regulation will retain some appropriate flexibility to individual institutions, facilities, and the visitors. Commenter contends that he has not seen that flexibility expressed. Commenter contends that this regulation is more restrictive than the previous regulation.

**Accommodation: None.**

**Response 13:** The Department disagrees. This regulation, which is in emergency effect, actually permits visitation with minors for certain inmates while the prior regulation, adopted in 2003, disallowed such visitation altogether. Also **See Commenter #1 Response B.**

**Comment 14:** Commenter contends that Section 3173.1(b) should be amended to allow for contact visitation with a non-victim minor.

**Accommodation: None.**

**Response 14:** In the case of those inmates convicted of PC violations listed in 3173.1(b), the Department points out that these are the same PC violations as listed in 3173.1(a). Therefore the Department contends that contact visitation with a non-victim minor places the minor at substantial risk as the inmate convicted of these crimes has shown an intent to harm minors.

**Comment 15:** Commenter contends that the Classification Committee is biased and should not be allowed to determine whether contact or non-contact visitation is appropriate for certain inmates.

**Accommodation: None.**

**Response 15: See commenter #48, Response IV.**

**Commenter #61:**

**Comment 1:** Commenter states that she is opposed to this regulation. Commenter further contends that the cost of implementing this change has been underestimated. According to the commenter there will be a need for more non-contact visiting booths, a need for more visiting staff to accommodate non-contact visiting scheduling, more staff to review documents and process visitors, more staff to accommodate the increase of inmates in protective custody, and more staff to write policies and research case factors.

**Accommodation: None.**

**Response 1: See Commenter # 12, Response 2.** Also the Department contends that an overall analysis of staffing levels in the visiting rooms, counseling areas, and other affected areas of CDCR was considered when proposing these changes.

**Comment 2:** Commenter contends that this regulation is discriminatory in nature in that inmates affected by this change are being treated the same as inmates who have been placed on non-contact visitation due to behavior problems and rules violations. Commenter contends that the changes penalize inmates for case factors.

**Accommodation: None.**

**Response 2:** The Department has no discretion when restricting visitation for those offenders convicted of violations noted in PC1202.05. The purpose for adopting Section 3173.1 was to prevent harm to minors and is primarily preventative, not punitive to the inmate.

**Comment 3:** Commenter contends that inmates restricted to non-contact visitation with minors will be subject to life threatening confrontations because it will be obvious that their crime is against minors in that they will be seen visiting behind glass with minors and in contact visitation with adults.

**Accommodation: None.**

**Response 3: See commenter #12, Response 3.**

**Comment 4:** Commenter contends that CDCR has many security measures in place that prevent misbehavior during visits. Commenter contends that there are surveillance cameras, trained staff, and minors are always accompanied by an adult. Commenter further contends that court orders should be allowed to be sought for non-victims when it is in the best interest of the child.

**Accommodation: None.**

**Response 4: See commenter #12, Response 4.** Also the Department contends that although family members may have the best of intentions for the minor children in mind, it is the responsibility of the Department to evaluate risks and implement policy that will ensure the safety and security of inmates, staff, and visitors in the Institutions. Regarding the comment suggesting that court orders should be allowed for contact visitation for non-victims, the Department contends that the creation of a judicial process suggested by commenter is beyond the Department's rulemaking authority.

**Comment 5:** Commenter contends that CDCR has not demonstrated a need, nor presented any evidence, to support this regulation change.

**Accommodation: None.**

**Response 5: See commenter #60, Response 9.**

**Commenter #62:**

**Comment A:** Commenter contends that she is in favor of this regulation. She contends that the prior regulation restricted her brother from visiting with children. That regulation placed many hardships on her family. She strongly urges the Department to reinstate visiting for her brother.

**Accommodation: None.**

**Response A: See Commenter #1 Response A.**

**Commenter #63:**

**Comment A:** Commenter contends that she is in favor of this regulation. She contends that the past rule restricted her son from visiting with his children and nieces and nephews. Commenter urges the Department to reinstate visiting for her son.

**.Accommodation: None.**

**Response A: See Commenter #1 Response A.**

**Comment B:** Commenter contends that visitation behind the glass would jeopardize her son's safety due to his crime.

**Accommodation: None.**

**Response B: See commenter #12, Response 3.**

**Commenter #64:**

**Comment A:** Commenter contends that he is a CDCR inmate and that in September of 2003, he was restricted from visitation with minors. Commenter contends that his Correctional Counselor proposed an unreasonable interpretation of PC 5054.2. Commenter further contends that this action violates the Constitution of the United States of America.

**Accommodation: None.**

**Response A: See Commenter #6, Response B.**

**Commenter #65:**

**Comment A:** Commenter contends that the institution visiting room is controlled by Correctional Officers who are physically present at all times. Additionally, there are cameras in the visiting room as well as the patio area. Commenter contends that this is the same setting that the Social Services Department uses for court approved settings. Commenter contends that this regulation is unnecessary

**Accommodation: None.**

**Response A: See Commenter #12, Response 4.**

**Comment B:** Commenter contends that while he is visiting with his adult visitors, he is surrounded by minors who are visiting with other inmates, yet he is restricted from visiting with his minor child.

**Accommodation: None.**

**Response B: See Commenter #12, Response 5.**

**Comment C:** Commenter contends that restricting visits with minors, hurts the children the most in that they can not stand up and speak for themselves.

**Accommodation: None.**

**Response C:** The Department contends that although family members may have the best of intentions for the minor children in mind, it is the responsibility of the Department to evaluate risks and implement policy that will ensure the safety and security of inmates, staff, and visitors in the Institutions.

**Commenter #66:**

**Comment A:** Commenter contends that she is in favor of this regulation. She contends that the prior regulation restricted her close family friend from visiting with his children and nieces and nephews. Commenter contends that this restriction has been very devastating for the children.

**Accommodation: None.**

**Response A: See Commenter #1 Response A.**

**Commenter #67:**

**Comment A:** Commenter contends that she is opposed to this regulation. Commenter contends that she is concerned that this change includes non-contact visitation for inmates convicted of the offense of murder. Commenter further contends that to deny all persons family visits and contact visits is too extreme and is not in keeping with rehabilitation. Commenter asks the Department to consider giving family visits back to those inmates who are completing sentences such as 15 years to life and to refrain from taking away contact visits based on the inmate's behavior and rehabilitation.

**Accommodation: None.**

**Response A: See Commenter #6 Response B** regarding the subject of 'family visiting.' Regarding the comment concerning non-contact visitation, the Department contends that the inclusion of PC Section 187 into 3173.1(d) is necessary due to the severity of the crime and the need to

ensure the safety of minor visitors. CCR Section 3173.1(d) states in part..."For inmates convicted of violating PC Section 187, when the victim is a minor, visitation with any other minor shall be limited to non-contact status except as authorized by the Institution Classification Committee." The Department further contends that these changes expand the ability of the Institutional Classification staff to conduct case by case reviews and determinations concerning the safety of visitation with minors in a contact or non-contact setting for those inmates convicted of crimes listed in 3173.1(d) which includes PC Section 187.

**Commenter #68:**

**Comment I A:** Commenter declares that he is a CDCR inmate. Commenter further states that this regulation places the affected inmates at risk of being identified as a sex offender due to the specific layout of the visiting rooms in CDCR. According to the commenter the affected inmate must visit with his minor visitor in a non-contact setting which is in full view of all other inmates in the visiting room.

**Accommodation: None.**

**Response I A: See commenter #12, Response 3.**

**Comment I B:** Commenter contends that the Department has knowledge of the risk to inmates affected by this restriction to non-contact visitation in that the Department has created a classification system which places inmates convicted of sex offenses alongside of non-sex offenders. This is done to reduce the risk of being targeted as a sex offender. According to the commenter this rule change exposes the inmate to substantial risk of harm and therefore places the Department at risk of law suits if an inmate is assaulted or injured as a result of this exposure.

**Accommodation: None.**

**Response I B: See commenter #12, Response 3.** Also, the Department further contends that these changes are needed in order to ensure the safety of all persons, including visiting minors, and the legitimate penological interests of maintaining the safety and security of the institutions.

**Comment II:** Commenter contends that this regulation will result in serious overcrowding of the non-contact visiting booths located in the CDCR institutions. According to the commenter, visiting areas are already severely overcrowded due to the reduction in visiting days. This overcrowding leads to early terminations and denial of visits.

**Accommodation: None.**

**Response II: See commenter #12, Response 2.**

**Comment III:** Commenter contends that there is no penological interest in the change in these regulations due to the amount of Correctional Officers in the visiting room and the presence of video cameras. Commenter further contends that Minors are safe in the visiting rooms due to safeguards that are already in place.

**Accommodation: None.**

**Response III: See Commenter #12 Response 4.**

**Comment IV:** Commenter contends that CDCR has provided no evidence where a minor has been exploited in the visiting room. Commenter sights Denise Johnson, Director of the Center for Children of Incarcerated Parents as saying in a July 27, 2005 letter that she is unaware of even one case in which a an incarcerated Parent has perpetrated a sexual offense against his own children in the visiting rooms.



**Accommodation: None.**

**Response IV: See Commenter #12 Response 6.**

**Commenter #69:**

**Comment A:** Commenter states that she agrees that if an inmate is convicted of a crime against a child, and during the course of a visit shows, an intent to harm the child, the visiting privileges should be withdrawn. She also contends that if the inmate who is convicted of a crime against a child shows remorse and has previously visited and has shown no intent to harm the child, visiting should not be denied based on the inmate's past crime.

**Accommodation: None.**

**Response A: See Commenter #12 Response 6.**

**Commenter #70:**

**Comment A:** Commenter contends that her son is restricted from visitation with his children and nieces and nephews. Commenter further states that her son has never hurt a child, but the system is hurting these children in that they are not able to see and physically touch their father and uncle.

**Accommodation: None.**

**Response A: See Commenter #6 Response B.** The specific case factors regarding the commenter's son's visitation restriction can not be addressed here.

**Commenter #71:**

**Comment A:** Commenter declares that he hopes that those deciding the law will see the affects of this 'blanket denial of visits.' Commenter contends that those whose lives have been destroyed because of crime, are the very ones that can help turn a child away from a life of crime. Commenter contends that the inmate in question has a Ministry that reaches many countries for the purpose of imparting God's law into the hearts of children. Commenter further contends that this 'blanket law' would hurt many children.

**Accommodation: None.**

**Response A: See Commenter #6 Response B.**

**Commenter #72:**

**Comment 1:** Commenter contends that this regulation does not offer a case by case review to all affected persons and is being applied as a blanket policy.

**Accommodation: None.**

**Response 1:** The Department disagrees. **See Commenter #12 Response 1.**

**Comment 2:** Commenter contends that there is a lack of non-contact visiting booths throughout the state to accommodate the influx of visitors this regulation will initiate.

**Accommodation: None.**

**Response 2: See Commenter # 12, Response 2.**

**Comment 3:** Commenter contends that restricting a class of inmates to non-contact visitation with minors places those inmates at risk to be targeted as sex offenders.

**Accommodation: None.**

**Response 3: See Commenter # 12, Response 3.**

**Comment 4:** Commenter contends that the regulation is unnecessary due to the amount of correctional supervision and cameras in the visiting rooms.

**Accommodation: None.**

**Response 4: See Commenter # 12, Response 4.**

**Comment 5:** Commenter contends that there is no penological interest in that the affected inmates are allowed to visit with their adult visitors in the same visiting room where there are minors present who are visiting other inmates.

**Accommodation: None.**

**Response 5: See Commenter # 12, Response 5.**

**Comment 6:** Commenter contends that she is unaware of one incident in a visiting room where a child was harmed by an inmate in contact visiting.

**Accommodation: None.**

**Response 6: See Commenter #12, Response 6.**

**Commenter #73:**

**Comment A:** Commenter contends that there is no penological interest in that 3173.1(b) unnecessarily prohibits inmates from visiting their own children except for non-contact visiting even when a parent or guardian is present. Commenter further contends that this regulation is too harsh and overly broad.

**Accommodation: None.**

**Response A: See Commenter #12, Response 1.**

**Comment B:** Commenter contends that his objections to Section 3173.1(d) and (e) are same as his objections to Section 3173.1(b).

**Accommodation: None.**

**Response B: See Commenter #12, Response 1.**

**Comment C:** Commenter contends that Sections 3173.1(d) and 3173.1(e) will result in all visits being denied by the Classification Committees as they are now regardless of this regulation change. Commenter further contends that there should be no discretion to deny visits for inmates who have never misbehaved in the visiting room.

**Accommodation: None.**

**Response C: See Commenter #48, Response IV.** Also the Department contends that these visiting restrictions are crafted to take into account the inmate's behavior and conduct prior to incarceration, as well as the commitment offense. This information is used to determine the propensity that an inmate may have to harm a minor.

**Comment D:** Commenter contends that he is opposed to the language in 3173.1(e) that implies even a history of an arrest will prohibit visitation. Commenter states that the only document available to the Classification Committee is the arrest report which is completely one sided. Commenter

further states that no prohibition should be allowed based on the mere fact of an arrest, especially if there was no conviction.

**Accommodation: None.**

**Response D: See Commenter #48, Response IV.**

**Commenter #74**

**Comment A:** With respects to 3173.1(a) (b) and (c) commenter, who represents herself as a staff member of the California Appellate Project, contends that this regulation will cause a greater number of prisoners to be placed on non-contact visitation which includes inmates who have favorable visiting history with minors. Commenter further contends that there is no explanation given in the Initial Statement of Reasons as to why the previous regulation Section 3170.5 was eliminated. Commenter further contends that there is no opportunity for the prisoners history and experience of family visiting and child visitation to be taken into account with this regulation. According to the commenter the regulations do not provide for individual determinations of the regulations, are harsh and overly broad.

**Accommodation: None.**

**Response A:** This rulemaking process relates to the current emergency regulation 3173.1, not the earlier repeal, in 2003 of prior Section 3170.5, which was addressed in the prior rulemaking process. Also concerning the commenters remark regarding the inmates prior visiting history and individual determinations. **See Commenter #12 Response 1, and this Commenter Response B.**

**Comment B:** Commenter contends that Sections 3173.1 (d) (e) and (f) direct the Classification Committee to authorize contact or non-contact visitation for inmates convicted of an offense involving a minor when the prospective visitor is a non-victim minor. Commenter further contends that individual determinations were not made taking into account the history of the inmate's prior visitation behavior. Commenter continues to state that under the previous Section 3173.1 inmates were denied visitation with nothing more than the violated PC section noted for the reason of denial. According to the commenter, the regulations do not mention family relations as a factor for staff to investigate. Additionally she contends that the Initial Statement of Reasons does not explain why the previous 3170.5 was eliminated.

**Accommodation: None.**

**Response B:** Again, this rulemaking process relates to the current emergency regulation 3173.1, not the earlier repeal, in 2003 of prior Section 3170.5, which was addressed in a prior rulemaking process. Regarding the comment concerning individualized determinations, it is the Department's position that the absence of an individualized determination for inmates with certain convictions in the current emergency regulations (3173.1(a) and (b)) is not a change from the prior regulations. Visiting with minors for inmates convicted of certain crimes will actually be allowed on a non-contact basis where it was not allowed at all under the prior regulation. **Refer to Commenter #48, Response I.** The Department further contends that individualized determinations were made under the prior regulation, and that it makes individualized determinations under the current emergency regulation, and that the commenter's dissatisfaction with the level of detail given in a written decision does not lead to a conclusion that an individualized determination was not made. Lastly Department contends that the Classification Committees are comprised of a quorum of individuals who have the ability to take into account the needs of the inmate, the needs of family members including minors, and the institution safety as a whole, in order to come to a decision regarding the visitation status of the inmate.

**Comment C:** Commenter contends that the non-contact visitation is not a substitute for contact visitation in that it places too many hardships on the inmate and the visitor. Commenter further contends that “behind glass” visitation is disheartening. Commenter sites studies that she claims show that non-contact visitation is very traumatic for children who were used to contact visitation and are now forced to communicate through a barrier. According to the commenter, children who experience this become scared and disoriented.

**Accommodation: None.**

**Response C:** The Department does recognize the value of healthy visiting for establishing and maintaining meaningful family and community relationships. This regulation will retain some appropriate flexibility to individual institutions, facilities, and their visitors, while at the same time, ensure the safety of all persons including visiting minors and will ensure legitimate penological interests of maintaining the safety and security of the institutions. The Department contends that this flexibility includes the ability of the Institutional Classification staff to conduct case by case reviews and determinations concerning the safety of visitation with minors in a contact or non-contact setting for those inmates convicted of certain PC violations. Also the Department contends that the Classification Committees are comprised of a quorum of individuals who have the ability to take into account the needs of the inmate, the needs of family members including minors, and the institution safety as a whole, in order to come to a decision regarding the visitation status of the inmate. Lastly, the Department contends that it has the ultimate responsibility to evaluate potential risks, analyze critical incidents occurring in the institutions, and implement policy that will ensure the safety and security of inmates, staff, and visitors in the institutions. Regrettably, the need to provide a safe environment for inmates, staff, adult and minor visitors, and the public as a whole, sometimes outweighs the individual needs of an inmate.

**Comment D:** Commenter sites many publications and studies, which discuss the value visitation has on incarcerated individuals. Commenter contends that the benefits of visitation are instrumental in reducing recidivism. Commenter further contends that inmates receiving visitation have a lower incident of substance abuse and fewer mental and emotional problems.

**Accommodation: None.**

**Response D: See this Commenter Response, C.**

**Comment E:** Commenter contends that she understands that the Department bears the responsibility of protecting minor visitors and ensuring the safety of the visiting rooms themselves. However, she contends that this regulation will cause visiting in California prisons to decrease and will cause the inmates to lose visitation with the people they care most about. Commenter urges the Department to return to the previous regulation 3170.5 or at a minimum add language that ensures a real evaluation of prisoners as family members and as parents. Commenter states that visiting should be protected to enhance rehabilitation.

**Accommodation: None.**

**Response E: See Commenter #12 Response 1.** Also the Department contends that the regulation was not enacted to address the increase or decrease in the amount of visitors who visit inmates in the Department. This regulation was enacted to ensure the safety and security of inmates, staff, and visitors, including minors, in its Institutions. Also the Department contends that the Classification Committees are comprised of a quorum of individuals who have the ability to take into account the needs of the inmate, the needs of family members including minors, and the institution safety as a whole, in order to come to a decision regarding the visitation status of the inmate. The Department contends that this level of evaluation does ensure an adequate evaluation of the inmate and his/her visiting status and that returning to the prior CCR Section 3170.5, which was addressed in the 2003 rule making action, would put the safety of minor visitors at unnecessary risk.

**Commenter 75 and 76:**

Staff in RPMB received correspondence from these two commenters via email. However, in both emails staff was unable to open the attached document. Therefore, staff was unable to read and respond to the comments.